

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

TAFFANEE L. KEYS
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

MARA MCCABE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL KOPP,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0609-CR-833
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0602-FA-028396

MAY 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Michael Kopp (“Kopp”) brings this direct appeal from his conviction by a jury of two counts of the Class A felony of child molesting and one count of the Class D felony of child seduction.

We affirm.

ISSUES

Kopp states the issues as:

1. Whether Mr. Kopp’s convictions for Count’s I & II Child Molest, as Class A Felonies Constitutes a violation of “The Continuing Crime Doctrine”
2. Whether Mr. Kopp’s Convictions For Count’s I & II Child Molest, a Class A Felony Constitutes Double Jeopardy in violation of the Indiana and U.S. Constitution.

FACTS

Kopp is the step-father of the victim, L.P. The evidence at trial shows that Kopp molested his victim in numerous ways during his marriage to the victim’s mother.

Count I of the charging information alleges that Kopp molested L.P. on or between May 1, 1998 to August 31, 1998. Count II of the charging information alleges that Kopp molested L.P. on or about September 1, 1998, to January 17, 1999.

DISCUSSION AND DECISION

Issue 1.

The continuing crime doctrine essentially provides that actions that are sufficient in themselves to constitute separate criminal offenses may be so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction. *Firestone v. State*, 838 N.E.2d 468, 471 (Ind. Ct. App. 2005). Double jeopardy does not apply to the standard of review under this issue. *Id.* The continuing crime doctrine defines those instances where a defendant's conduct amounts only to a single chargeable crime. *Id.*

Kopp posits that the victim's testimony covered his molestation over a prolonged period of time, weekly more or less, and that the act of molesting ranged from Kopp's masturbation, his inserting his finger in her vagina, and fondling her breasts and vagina, among other things.

Kopp's acts do not constitute a continuing criminal transaction. They were not compressed in time or continuity of action. The victim's testimony established that Kopp molested her on a regular basis over a period of time that began during the summer between the victim's seventh and eighth grades and continued through her junior year of high school.

When separate and distinct criminal deviate conduct crimes occur, "even when they are very similar acts done many times to the same victim, they are chargeable individually as separate and distinct criminal conduct." *Collins v. State*, 717 N.E.2d 108, 110 (Ind. 1999). (quoting *Brown v. State*, 459 N.E.2d 376, 378 (Ind. 1984)). We do not approve of any principle that exempts one from prosecution from all the crimes he commits because he sees fit to compound or multiply them.

Id. Such a principle would encourage the compounding and viciousness of the criminal acts. *Id.*

Issue 2.

We first note that Kopp makes no argument relating to the federal constitution, and that portion of this issue is waived. *See Minton v. State*, 802 N.E.2d 929, 936 n. 8 (Ind. Ct. App. 2004). Kopp's argument in his brief is also sparse in mentioning what state constitutional provisions are violated.

Kopp recites the same facts as they appeared in the preceding issue and alleges that there is a reasonable possibility the trier of fact used the same evidentiary facts to establish the essential elements of the second count of child molesting as in the first count. Kopp argues that this is double jeopardy.

Minton addressed a double jeopardy issue that is factually similar to this issue. *Minton* was convicted of two counts, among other charges, of child molesting. The charging information alleged different dates for the molestation in each of the two counts. The *Minton* court held that the double jeopardy clause does not protect a defendant from being convicted of multiple counts of the same offense against the same victim. 802 N.E.2d at 938.

Richardson v. State, 717 N.E.2d 32, 53 (Ind. 1999), says that when there are multiple convictions for the same offense, the reviewing court uses the actual evidence test. The Kopp jury heard testimony from the victim from which it could find or infer that a molestation occurred during the time frame specified in the first count and the jury heard separate testimony from which it could find or infer that an

additional molestation occurred during the time frame specified in the second count.
See Minton, 802 N.E.2d at 937-38.

We would also observe that there are different essential elements between child molesting, Ind. Code §35-42-4-3, and child seduction, Ind. Code §35-42-4-7, notably the ages of the perpetrator and the ages of the victim. *See also, Minton*, 802 N.E.2d 936-37.

CONCLUSION

The continuing crime doctrine does not apply to this appeal and Kopp was not subjected to double jeopardy.

Judgment affirmed.

DARDEN, J., and MATHIAS, J., concur.